



METROPOLITAN
TRANSPORTATION
COMMISSION

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Steve Heninger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

September 16, 2010

REQUEST FOR QUALIFICATIONS
Legal Services Assistance

Dear Counsel:

The Metropolitan Transportation Commission (MTC), on behalf of itself, the MTC Service Authority for Freeways and Expressways (MTC SAFE), and the Bay Area Toll Authority (BATA), invites your firm to submit a Statement of Qualifications (SOQ) to provide legal services on an as-needed basis in the following areas of government agency practice:

- Public sector Employment law and workers' compensation
- Civil rights law, including Title VI, Title VII, and the ADA
- Public sector law, including procurement, the Ralph M. Brown Act, and the California Public Records Act
- Environmental law, including NEPA and CEQA
- Construction law and California express lane development
- Transportation law, including
- Litigation and government contract claims
- Privacy

Law firms may submit SOQs related to one or more of the specified areas of specialty, provided that the firm meets the Minimum Qualifications listed in Section V of this RFQ. MTC intends to enter into contracts with one or more firms for a period extending through June 30, 2014. The annual budget for the contracts (not including litigation costs) is \$200,000.

All references to "MTC" in this RFQ include MTC SAFE and BATA, as well.

This letter together with its enclosures comprises the RFQ for this project. Responses to the RFQ should be submitted in accordance with the instructions set forth in this RFQ.

I. Statement of Qualifications Due Date

Interested firms must submit an original and three (3) hard copies and an electronic pdf. copy of their SOQ by 4:00 p.m., October 8, 2010. ***Statements of Qualifications received after that date and time will not be considered.*** Submission of an electronic copy only will not satisfy submission requirements.

II. MTC Contact

Statements of Qualifications (SOQs) and all inquiries relating to this RFQ should be submitted to the MTC General Counsel (also referred to in the RFQ as the Project Manager) as shown on page 2.

JOSEPH P. BORT METROCENTER | 101 EIGHTH STREET | OAKLAND, CA 94607-4700
TEL 510.817.5700 | TTY/TDD 510.817.5769 | FAX 510.817.5848 | E-MAIL info@mtc.ca.gov | WEB www.mtc.ca.gov

Adrienne D. Weil, MTC General Counsel
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland CA 94607-4700
aweil@mtc.ca.gov

III. Notice of Addenda and Requests for Exceptions

Any addenda to this RFQ that may be issued by MTC will be posted at <http://www.mtc.ca.gov/jobs/>. It is each interested law firm's responsibility to check for addenda to this RFQ and comply with new or revised requirements that may be stated therein.

Requests for clarification or exception to RFQ provisions must be received no later than 4:00 p.m., September 27, 2010 to guarantee consideration.

IV. Background

MTC is the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, established pursuant to California Government Code Sections 66500 *et seq.* MTC functions as both the regional transportation planning agency (RTPA) – a state designation – and for federal purposes, as the region's metropolitan planning organization (MPO) and designated recipient for certain federal grant funds.

The MTC SAFE, established pursuant to California Streets and Highway Sections 2550 *et seq.* MTC SAFE, in partnership with California Highway Patrol and California Department of Transportation, oversee the installation and operation of call boxes and provides roadside assistance to motorists on the Bay Area Free ways. Its revenues are derived from a one-dollar vehicle registration fee.

BATA is a public agency created by Senate Bill 226 effective January 1, 1998. Senate Bill 226 amended Streets and Highway Code Section 30950 *et seq.* and transferred to BATA certain California Transportation Commission (CTC) and State of California, Department of Transportation (Caltrans) duties and responsibilities for the disposition of toll revenues collected from toll bridges owned and operated by Caltrans in the San Francisco Bay Area.

The Office of General Counsel (OGC) advises and provides legal services to all three agencies. From time to time, the OGC requires outside legal assistance in specialized areas of law, which is the purpose of this RFQ.

V. Minimum Qualifications

To be eligible for consideration for any of the areas of specialty, law firms must meet the following minimum qualifications:

1. Attorneys must be licensed to practice before the state and federal courts in the State of California and be in good standing with the State Bar of California.
2. Firms must have at least five (5) years experience in each area of law for which the firm has expressed an interest in its SOQ.
3. The Partner in charge must have at least ten (10) years relevant experience.

4. Firms must have substantial experience representing government sector clients, including at least one of the following:
 - a) Firm serves as general counsel for at least one (1) transportation agency; or
 - b) Firm has represented at least five (5) government sector clients during the last three (3) years, at least two (2) of which must be in the transportation sector; or
 - c) Litigation only: Firm has handled at least two (2) cases on behalf of public sector clients during the past three (3) years.

Law firms are not required to have experience in all requested areas. However, full service firms able to provide legal services in more than one area will be favorably considered.

VI. Scope of Work and Budget

Each contract awarded by MTC will include a general scope of work based on one or more of the areas of specialty identified above. Work will be requested on an as-needed basis. Pre-qualification by MTC does not guarantee that a contract will be awarded.

The three agencies have established a total annual budget for the contracts resulting from this RFQ (not including litigation costs, if any) of \$200,000. Contracts resulting from this solicitation, if awarded, will combine payment on an hourly fee for service basis, plus expenses, and fixed fees for defined services.

VII. Form of Statement of Qualification

MTC asks that the SOQ follow the following format. Proposers are encouraged to print double-sided copies to save paper.

1. A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should refer to this RFQ by title and date and should include the name and telephone number of a contact person and a statement that the SOQ is a firm offer to enter into a contract with MTC according to the terms of this RFQ. The transmittal letter should clearly indicate all areas of practice for which the law firm wishes to be considered.
2. A firm profile and summary of the firm's qualifications in relation to the requested areas of expertise. The summary should include a brief history of the firm's experience in representing government entities, particularly transportation agencies.
3. Descriptions of any assignments relevant to meeting the Minimum Qualifications, listed in Section V, above. The description should include the following:
 - Client agency
 - General description of work performed
 - Names of the staff proposed for this project who worked on the project and their roles
 - A summary of the outcome and achievements of the assignment
4. Resumes of proposed personnel that should include: a description of relevant experience, proposed role, length of work experience, and areas of expertise.

5. References who can attest to key staff's experience in performing work substantially similar to the services covered by this RFQ for which the firm is submitting an SOQ. References should include contact information and the name of the project or projects done by the consultant for that client.
6. A description of any potential conflicts of interest with other clients and how prospective conflicts will be handled.
7. A signed California Levine Act statement (*Appendix A*).
8. Hourly rates for all proposed project personnel. A description of all costs and expenses that would be passed along to MTC. A statement that the rates indicated shall be firm through December 31, 2011, and a description of the basis on which hourly rates will escalate, with a "not to exceed" cap.

VIII. Evaluation Factors

SOQs will be evaluated initially to determine that they meet the minimum qualifications. All SOQs meeting the minimum qualifications will be evaluated based on the following criteria, in relative order of importance:

- Qualifications and experience of attorneys who will be providing services in the areas of law to which the SOQ is directed, including relevant experience of lead attorney and experience representing public agencies, especially public agencies involved in transportation matters.
- Depth and breadth of experience in relation to the subject matter for which the firm seeks to provide legal services; availability of qualified attorneys to work on multiple projects at the same time; and scope of services offered.
- Hourly rates and cost effectiveness (including local presence of key personnel).

The evaluation team may interview one or more firms prior to selection or may recommend a panel without interviews. References may be contacted at any time during the evaluation process.

The evaluation team will recommend a list of firms to the MTC Executive Director, to be forwarded to the MTC Administration Committee for approval. Thereafter, the Executive Director or the MTC Administration Committee may authorize individual contracts, depending on their dollar amounts.

Selection to be on the panel will not necessarily result in award of a contract. Once a panel has been selected, MTC reserves the right in its sole discretion to determine which law firm's qualifications, experience, available resources and cost best suit each assignment.

MTC reserves the right to accept or reject any and all SOQs submitted, to waive minor irregularities in SOQs, and to request additional information from the consultants. Any awards made will be to firms whose qualifications are best suited to the assignment and most advantageous to MTC, based on the evaluation criteria outlined above. MTC reserves the right to award one or more contracts at the time the panel is approved.

IX. Consultant Selection Timetable

4:00 p.m., September 27, 2010	Closing date and time for requests for clarifications/ exceptions
No later than three (3) business days prior to the date SOQs are due	Closing date and time for objections to RFQ provisions
4:00 p.m., October 8, 2010	Closing date and time for receipt of Statements of Qualifications
Week of October 18 , 2010	Oral interviews, if necessary
November 10, 2009	MTC Administration Committee approval of panel of law firms

X. Selection Disputes

A firm submitting or intending to submit an SOQ may object to a provision of the RFQ on the foundation that it is arbitrary, biased or discriminatory, or to the selection of a particular firm on the grounds that MTC procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

- 1) no later than three (3) business days prior to the date SOQs are due, for objections to RFQ provisions; or
- 2) no later than three (3) business days after notification that the firm has not met the minimum qualifications; or
- 3) within three (3) working days after the date on which a panel is selected by the MTC Administration Committee.

The evaluation record shall remain confidential until the MTC Administration Committee selects the panel.

The MTC Executive Director or a designated representative will appoint a staff review officer to consider the protest. The Executive Director (or designee) will respond to the protest in writing, based on the recommendation of a staff review officer. Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the MTC Executive Director. Authorization to award a contract to a particular firm by the MTC Administration Committee shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the Executive Director.

Should the protestor wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Administration Committee, no later than three (3) working days after receipt of the written response from the Executive Director. The Administration Committee's decision will be the final agency decision.

XI. General Conditions

Materials submitted by respondents and evaluated by MTC are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*) after the MTC Administration Committee authorizes selection of the pre-qualified panel.

MTC reserves the right in its sole discretion not to enter into any contract as a result of this RFQ. Selection of a firm to perform as needed legal services assistance does not guarantee that MTC will contract with the firm or that the firm will be given any projects.

A synopsis of MTC's contract provisions is enclosed for your reference as *Appendix B*. A complete copy of the standard contract may be requested from the Project Manager. If a firm wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted by the deadline specified above for requests for exception. If no such change is requested, the firm will be deemed to accept MTC's standard contract provisions based on its submission of an SOQ.

The selected firms will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix C*, which includes professional liability insurance in the amount of \$5,000,000. By submitting an SOQ, a firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix C, Insurance Requirements*, within five (5) days of MTC's notice to a firm that it is prepared to enter into a contract with the firm. Requests to change MTC's insurance requirements must be brought to MTC's attention no later than the date for requesting exceptions to RFQ provisions. If such objections are not brought to MTC's attention by that deadline, compliance with the insurance requirements will be assumed.

Authority to Commit MTC

Based on the recommendation of the selection panel, the Executive Director of MTC will recommend a panel of law firms to the MTC Administration Committee, which has the authority to commit to the expenditure of funds in connection with this RFQ.

We appreciate your interest in this RFQ and look forward to receiving your statements of qualifications.

Sincerely,



Steve Heminger
Executive Director

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APPENDIX A
CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Tom Azumbrado
Tom Bates
Dave Cortese
Dean J. Chu
Chris Daly
Bill Dodd

Dorene M. Giacomini
Federal D. Glover
Scott Haggerty
Anne W. Halsted
Steve Kinsey
Sue Lempert
Jake Mackenzie

Jon Rubin
Bijan Sartipi
James P. Spering
Adrienne J. Tissier
Amy Rein Worth
Ken Yeager

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

___ YES ___ NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

___ YES ___ NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX B

SYNOPSIS OF PROVISIONS IN MTC'S STANDARD CONSULTANT AGREEMENT

The selected LEGAL COUNSEL will be required to sign Agency's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFQ. In order to provide bidders with an understanding of some of Agency's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.

Termination: MTC may, at any time, terminate the Agreement upon written notice to LEGAL COUNSEL. Upon termination, MTC will reimburse the LEGAL COUNSEL for its costs for incomplete deliverables up to the date of termination. Upon payment, MTC will be under no further obligation to the LEGAL COUNSEL. If the LEGAL COUNSEL fails to perform as specified in the agreement, MTC may terminate the agreement for default by written notice following a period of cure, and the LEGAL COUNSEL is then entitled only to compensation for costs incurred for work products acceptable to MTC, less the costs to MTC of rebidding.

Insurance Requirement: See *Appendix C, Insurance Requirements*, attached hereto.

Independent Contractor: LEGAL COUNSEL is an independent contractor and has no authority to contract or enter into any other agreement in the name of MTC. LEGAL COUNSEL shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: LEGAL COUNSEL agrees to defend, indemnify and hold MTC harmless from all claims, damages, liability, and expenses resulting from any negligent or otherwise wrongful act or omission of LEGAL COUNSEL in connection with the agreement. LEGAL COUNSEL agrees to defend any and all claims, lawsuits or other legal proceedings brought against MTC arising out of such negligent or wrongful acts or omissions. The LEGAL COUNSEL shall pay the full cost of the defense and any resulting judgments.

Data Furnished by MTC: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("MTC Data") made available to the LEGAL COUNSEL by MTC for use by the LEGAL COUNSEL in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by the LEGAL COUNSEL's use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by the LEGAL COUNSEL in the context of the Project shall be the property of MTC.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the LEGAL COUNSEL under this Agreement and provided to

MTC as a deliverable shall be the property of MTC. LEGAL COUNSEL will be required to assign all rights in copyright to such Work Product to MTC.

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution of personnel or substantial decrease of hours will be allowed without prior written approval of MTC.

Subcontracts: No subcontracting of any or all of the services to be provided by LEGAL COUNSEL shall be allowed without prior written approval of MTC. MTC is under no obligation to any subcontractors.

LEGAL COUNSEL's Records: LEGAL COUNSEL shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to MTC for inspection and auditing purposes. The records shall be retained by LEGAL COUNSEL for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of MTC can have any interest in this agreement or its proceeds and LEGAL COUNSEL may not have any interest which conflicts with its performance under this Agreement.

Governing Law. The Agreement shall be governed by the laws of the State of California.

APPENDIX C

INSURANCE REQUIREMENTS

Minimum Insurance Coverages. LEGAL COUNSEL shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A-X or better.

Yes (✓)	Please certify by checking the box below that required coverages will be provided within five (5) days of MTC's notice to firm that it wishes to contract with the firm.
—	<u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, and any and all other coverage of LEGAL COUNSEL's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as LEGAL COUNSEL is a sole proprietor with no employees.
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of LEGAL COUNSEL and LEGAL COUNSEL's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnatee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.</p> <p>MTC, and its commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from LEGAL COUNSEL's operations.</p>
—	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by LEGAL COUNSEL and LEGAL COUNSEL's officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
—	<u>Umbrella Insurance</u> in the amount of \$2,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.
—	<u>Errors and Omissions Professional Liability Insurance</u> (if applicable) in an amount no less than \$5,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, LEGAL COUNSEL agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until

	<p>expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the LEGAL COUNSEL and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the LEGAL COUNSEL. No contract or agreement between the LEGAL COUNSEL and any subcontractor/consultant shall relieve the LEGAL COUNSEL of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the LEGAL COUNSEL and any subcontractor/consultant working on behalf of the LEGAL COUNSEL on the project.</p>
<p>_____</p>	<p><u>Property Insurance</u> covering LEGAL COUNSEL'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC. If such insurance coverage has a deductible, the LEGAL COUNSEL shall also be liable for the deductible.</p>
<p>Deductibles: Any deductibles or self-insurance retentions over \$100,000 are subject to the approval of MTC.</p> <p>Notice of Termination: All LEGAL COUNSEL policies shall provide that the insurance carrier shall give written notice to MTC at least 60 days prior to cancellation, non-renewal or material change of coverage in the policy or policies, and shall provide notice of such change to MTC and any other additional insured.</p> <p>Additional Provisions: Each policy or policies of insurance described in <u>Commercial General Liability Insurance</u>, above shall contain the following provisions:</p> <ul style="list-style-type: none"> • Inclusion of MTC, its commissioners, officers, representatives, agents and employees, as additional insured's with respect to work or operations in connection with this Agreement. • Endorsement providing that such insurance is primary insurance and no insurance of MTC will be called on to contribute to a loss. <p>Certificates of Insurance: Promptly on execution of this Agreement and prior to commencement of any work hereunder, LEGAL COUNSEL shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof. LEGAL COUNSEL agrees, upon written request by MTC, to furnish copies of such policies or endorsements required under the Agreement prior to the Effective Date of the Agreement.</p> <p>Disclaimer: The foregoing requirements as to the types of limits of insurance coverage to be maintained by LEGAL COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by LEGAL COUNSEL pursuant hereto, including, but not limited to, liability assumed pursuant to <i>Appendix B</i>, Indemnification.</p> <p>Subcontractor's Insurance: LEGAL COUNSEL shall require each of its subcontractors to provide the aforementioned coverages, unless such coverages are waived or reduced in writing by the MTC Project Manager.</p>	

By signing below you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of MTC's notice to firm that it wishes to contract with the firm.

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC's attention no later than the date for protesting RFQ provisions. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.